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Supreme Court, U.S.
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No. 97-539

In The

Supreme Court of the United States

October Term, 1996

BILLIE M. IRELAND,

Petitioner,

vs.

GARY L. TUNIS, RICHARD THOMPSON, JOHN MEIERS and RICHARD D. KUHN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether summary judgment was properly granted and affirmed in favor of a state circuit court judge under the doctrine of absolute judicial immunity for the issuance of an arrest warrant where applicable state law provides circuit judges with broad jurisdiction, encompassing the issuance of arrest warrants?

II. Whether summary judgment was properly granted and affirmed in favor of a state prosecutor and assistant prosecutor for the act of procuring an arrest warrant under the doctrine of absolute prosecutorial immunity where the arrest warrant complied with Michigan law in both form and substance and where the circuit judge who issued the warrant did so in compliance with broad jurisdiction granted that judge by Michigan law?

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STATEMENT OF THE CASE

A. Introduction.

This case involves a straightforward application of absolute immunity, which was held to defeat claims brought under section 1983 against a state court judge, a state prosecutor, and an assistant state prosecutor. Petitioner has attempted to distinguish this case by contriving an argument that a Michigan circuit court judge is not authorized to issue arrest warrants and, accordingly, that the absolute immunity which would otherwise apply to the respondents' actions is lost.

Petitioner's argument was rejected by the trial court in two well-reasoned opinions — the first opinion pertaining to the state circuit judge, the second to the prosecutor and assistant prosecutor. The Sixth Circuit Court of Appeals affirmed. The Sixth Circuit also denied petitioner's motion for rehearing *en banc*. Petitioner now contends that both the trial court and the Sixth Circuit Court erred, and that the intervention of this Court is appropriate.

The lower courts in this case did not err. Petitioner has failed to demonstrate that this matter merits review by this Court.

B. Underlying facts.

Petitioner sets forth her statement of the underlying facts in pp. 8-11 of the petition. That statement omits a number of material facts and either misrepresents other facts or takes them out of context.

The City of Rochester Hills did enter into a contract with Oakland County to have the Oakland County Sheriff's Department provide police services to the city. The contract

called for the tax payers of the city annually to pay Oakland County more than $3,000,000 for police protection. None of the deputies from the Oakland County Sheriff's Department was to be paid directly by the City of Rochester Hills for any of the law enforcement services provided. All compensation for the deputies was to come directly from the county (Apdx. A-40 – A-42).

Nevertheless, petitioner arranged to have Deputy Carlin, while he was a Captain for the Rochester Hills substation, receive compensation directly from the city (R. 29, pp. 188, 192-93; letters attached to R. 50 as Exhibit 6). Petitioner undertook this activity without advising the city council (R. 29, pp. 154-155). The planned payments to Carlin were not reflected in the budget for 1991, the year in which the payments commenced (R. 50). From January 1991 to December 1992, petitioner authorized payments to Carlin from the taxpayer of Rochester Hills in excess of $20,000 (R. 29, pp. 205-06).

In December of 1992, the Oakland County Sheriff's Department began an internal investigation of Carlin. After the investigation was commenced, petitioner spoke with the Rochester Hills City Attorney and, thereafter, requested that the Oakland County Prosecutor's Office commence an investigation into whether petitioner's agreement with Carlin was lawful (R. 30, p. 68).

On October 5, 1993, after a lengthy investigation, Oakland County Assistant Prosecutor Tunis and Investigator John Meiers prepared a written complaint alleging that petitioner had violated various Michigan laws pertaining to the compensation of a county-employed deputy. The complaint was presented to Oakland County Circuit Court Judge Richard Kuhn, who was acting as chief judge of the Oakland County Circuit Court at that time. As chief judge, Judge Kuhn was authorized to issue

arrest warrants when necessary to maintain confidentiality with regard to political situations — a practice which had been maintained in Oakland County for some 20 years (R. 23, Deposition of Judge Kuhn, pp. 7-11). At his deposition in this case, Judge Kuhn testified that the criminal complaint was sworn to under oath in his presence (R. 23, pp. 18-19). Judge Kuhn further testified that the criminal complaint, in his opinion, stated probable cause that an offense had been committed by petitioner (R. 23, pp. 22-23, 25).

On October 5, 1993, Judge Kuhn issued a warrant for petitioner's arrest. The warrant charged petitioner with eight counts (warrant attached to R. 50 as Exhibit 10). Petitioner was arraigned on the eight counts, and a preliminary examination commenced on February 28, 1994. The preliminary examination was conducted by Rochester Hills District Court Judge Ralph Nelson. After four days of testimony, and after noting that "certainly it was a most difficult case," Judge Nelson issued his opinion finding that there was no probable cause to believe the mayor of his city committed the eight crimes with which she was charged. Accordingly, he dismissed the charges against petitioner (Apdx. K-1). Petitioner then brought the instant action under 42 U.S.C. § 1983, alleging that the arrest warrant violated her Fourth Amendment rights.

REASONS FOR DENYING THE WRIT

Petitioner's complaint is based strictly on the issuance of an arrest warrant allegedly without probable cause to arrest. In granting all defendants' motions for summary judgment, United States District Court Judge Rosen issued two carefully-reasoned opinions, finding that all defendants were entitled to immunity. Judge Rosen's first opinion found that defendant Judge Kuhn was entitled to judicial immunity; his second opinion found that the prosecutor and assistant prosecutor were both entitled to

absolute immunity while the prosecutor's investigator was entitled to qualified immunity. All these findings were affirmed in another carefully-reasoned opinion issued by the Sixth Circuit Court of Appeals.

What makes this case particularly inappropriate for review by this Court is this: petitioner appears to concede that this case would involve straightforward applications of judicial, absolute prosecutorial, and qualified immunity, with one caveat. The caveat, the only basis for disputing the lower court's findings that immunity attaches, is a contention that the arrest warrant was issued by a court which lacked jurisdiction to issue the warrant.[1] Yet, this fundamental contention upon which petitioner's entire case is based is flawed.

To the contrary, it is well settled in Michigan that circuit courts are given a broad grant of general jurisdiction. The Michigan Constitution of 1963, Art. 6, § 13 provides that the "circuit court shall have original jurisdiction in all matters not prohibited by law. . . ." Circuit courts are presumed to have jurisdiction unless the matter in question is specifically excluded by law. *People v. Loukas*, 104 Mich. App. 204, 304 N.W. 2d 532 (1981). Petitioner can identify no Michigan case or statute specifically prohibiting a circuit court judge from issuing an arrest warrant. Accordingly, petitioner's argument that Judge Kuhn, Chief Judge of the Oakland County Circuit Court, was without jurisdiction to issue an arrest warrant is without merit.

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1. *See, e.g.*, Petition, p. 23 where petitioner states:

> This case brings before the court an unanswered question: if the prosecution seeks to initiate a prosecution and begins it improperly because the warrant has not been issued by a court with jurisdiction to issue a warrant, is the prosecutor entitled to the protection of absolute immunity attaching to the judicial process?

None of the Michigan cases cited in the petition (*see* Petition, p. 16) stands for the proposition that a Michigan circuit court judge cannot issue an arrest warrant. At most, those cases stand for the undisputed proposition that a Michigan district judge *can* issue an arrest warrant.

The Michigan Legislature has conferred jurisdiction to issue arrest warrants upon magistrates and district court magistrates as follows:

> A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

M.C.L. 764.1(a)(1); M.S.A. 28.860(1)(a).

> A district court magistrate shall have the following jurisdiction and duties:
>
> * * *
>
> (b) to issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney. . . .

M.C.L. 600.8511; M.S.A. 27A.8511.

However, the Michigan Legislature has not prohibited circuit court judges (who, by definition, are not magistrates) from issuing arrest warrants. By contrast, in the very definition of "magistrate" provided by the legislature, circuit court judges are given discretion to perform the duties of a magistrate. Specifically, the definition of "magistrate" provides:

> "Magistrate" means a judge of the district court of a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate where explicitly provided in this act, in the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being §§ 660.101 to 600.9947 of the Michigan Compiled Laws, or in any other statute. *This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise, in his or her discretion, the authority of a magistrate.*

M.C.L. 761.1(f); M.S.A. 28.860(f) (emphasis added).[2]

Thus, Judge Kuhn was authorized to issue the arrest warrant in at least two respects. First, the Michigan Legislature specifically provided that circuit court judges may, in their discretion, exercise the authority of magistrates. Secondly, even if this specific authorization were not included in the definition of "magistrate," it is clear that circuit courts have general jurisdiction over matters unless that jurisdiction is specifically excluded by law. Since petitioner can cite to no Michigan law specifically excluding the jurisdiction of circuit court judges to issue arrest warrants, petitioner's argument that Judge Kuhn's issuance of the arrest warrant was outside of his jurisdiction is without merit. Petitioner's claims against Judge Kuhn, therefore, fail. Petitioner's claims as against respondents Thompson and Tunis also fail since the immunity enjoyed by those respondents exists if Judge Kuhn had a "colorable claim" of jurisdiction. See Opinion of Sixth Circuit Court of Appeals, 113 F.2d at 1444.

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2. The above quoted statutory provision is the version which was in effect at the time the arrest warrant was issued.

Petitioner has ignored all of these statutory provisions, instead relying upon a two-page opinion from the Michigan Court of Appeals, *People v. Farmilo,* 137 Mich. App. 378, 358 N.W. 2d 350 (1984). Petitioner erroneously contends *Farmilo* stands for the proposition that a circuit court judge cannot issue an arrest warrant. On the contrary, *Farmilo* merely stands for the proposition that a circuit judge has the *discretion* either to issue or refuse to issue an arrest warrant. The Sixth Circuit correctly noted in this case:

> We agree with the United States District Court's conclusion that *Farmilo* should not be read as prohibiting a Michigan state circuit judge from issuing an arrest warrant. The issue in *Farmilo* concerned whether a circuit judge was required to issue an arrest warrant when requested to do so, and the Court of Appeals of Michigan upheld the judge's refusal to entertain the warrant request. Thus, *the clear implication of Farmilo's holding is that a circuit court has discretion with respect to issuing, or not issuing, an arrest warrant,* a position entirely consistent with section 761.1(f)'s recognition that a Michigan circuit judge has discretion to exercise the authority of a magistrate judge.

Ireland v. Tunis, 113 F.2d 1435, 1442 (1997) (emphasis added).[3]

Perhaps more importantly, the district court correctly

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3. Counsel for respondents Thompson, Tunis, and Meiers also advised the Sixth Circuit Court that, even if that court were to find an irresolvable conflict in Michigan law as a result of the *Farmilo* decision, the court was not bound to follow *Farmilo,* a decision of Michigan's Court of Appeals, if it believed the Michigan Supreme Court would decide otherwise. *See Kingsley Associates, Inc. v. Moll Plasti Crafters, Inc.,* 65 F.3d 498 (CA6 1995).

determined that Judge Kuhn would be entitled to absolute immunity unless he acted in the "clear absence of all jurisdiction" (Apdx. B-22).[4] The Supreme Court in *Stump v. Sparkman,* 435 U.S. 349, 98 S. Ct. 1099 (1978), quoting *Bradley v. Fisher,* 13 Wall. 335, 20 L. Ed. 646 (1872) held:

> A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority, but rather he will be subject to liability only when he has acted in the "clear absence of all jurisdiction."

Stump, 435 U.S. at 349.

In light of the considerable authority imparting such broad jurisdiction on circuit court judges in Michigan, Judge Kuhn certainly did not act in the clear absence of all jurisdiction. Moreover, with respect to the prosecutor and assistant prosecutor, at no time during any of the proceedings did petitioner cite authority for the proposition that the immunity enjoyed by the prosecutors would somehow be removed even if petitioner could prove that the arrest warrant had not been issued by the correct judge.[5]

The briefs submitted by respondents in both the district court

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4. The issue is not, as petitioner originally argued, whether or not a circuit court has jurisdiction to issue an arrest warrant, but, rather, whether or not the issuance of an arrest warrant by a circuit court judge constitutes a non-judicial act taken in "clear absence of all jurisdiction."

5. The petition also appears to allege in passing that the arrest warrant violated the Fourth Amendment, although no argument to that effect is advanced. In any event, it is undisputed that the complaint fully complied with Michigan law regarding form and substance. *See* 113 F.2d at 1449, n.12.

and the Sixth Circuit Court of Appeals set forth additional arguments sufficient to dispose of petitioner's claims. For purposes of brevity, and because petitioner's primary argument so clearly fails, those arguments are omitted from this response. However, respondents also wish to point out that petitioner has not demonstrated and cannot demonstrate how this case presents compelling reasons warranting the grant of the requested writ. No conflict among the circuits has been alleged. [6] No important federal question has been decided in a way which conflicts with a state court of last resort. The lower courts in this case did not err.[7]

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6. Petitioner alleges that *Joseph v. Patterson*, 795 F.2d 549 (CA6 1986) is in conflict with other circuits, and that that conflict is now before this Court in *Kalina v. Fletcher*, 95 F.3d 653 (1995), *cert. granted*, __ U.S. __, 117 S. Ct. 1079 (1997) (Petition, pp. 22-23). However, the facts of *Kalina* are distinguishable from the instant case. In *Kalina*, the plaintiff alleged that the prosecutor made false statements in an affidavit supporting an application for an arrest warrant. There is no such allegation in the instant case. Rather, petitioner here alleges that the mere presentation of an application for an arrest warrant to a judicial officer is not accompanied by absolute immunity if presented to a judicial officer without jurisdiction. This issue is not an issue in *Kalina*.

7. Defendant Meiers was granted summary judgment on the grounds of qualified immunity. Because petitioner has not addressed that ruling in her questions presented, any challenge to the rulings with respect to defendant Meiers has been waived. Accordingly, the issues pertaining to Meiers are not addressed in this response. In any event, the district court and Sixth Circuit Court of Appeals correctly agreed that Meiers is entitled to qualified immunity for his alleged activities.

CONCLUSION

For the reasons given above, respondents request that the petition for writ of certiorari be denied.

Respectfully submitted,

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